

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THEECHECK.COM, LLC,

Plaintiff,

v.

NEMC FINANCIAL SERVICES
GROUP INC., CYBERBOX
TECHNOLOGY, INC., ELLINGTON
PICHARDO, PRESLEY MARTINEZ and
OJAY MARTINEZ-GIL,

Defendants.

Case No.: 1:16-cv-08722-PKC

**AFFIRMATION IN SUPPORT OF
MOTION FOR DEFAULT
JUDGMENT**

JUSTIN MERCER, ESQ., an attorney admitted to practice law in the Courts of the State of New York and this District, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows and says:

1. I am an attorney for the plaintiff herein, and make this affirmation in support of Plaintiff's motion for default judgment against defendant NEMC FINANCIAL SERVICES GROUP INC. ("New Era Financial") and CYBERBOX TECHNOLOGY, INC. ("Cyberbox", together with New Era Financial, "Defendants"), in this suit.

2. On or about November 9, 2016, plaintiff filed a complaint seeking compensatory and punitive damages arising from blatant acts of false or misleading statements in violation of the Lanham Act and unfair competition in connection with the publishing of a false complaint on RipoffReport.com; to enjoin Defendants from future acts; for tortious interference and for defamation/trade disparagement under New York common law ("Complaint"). Copy of the Complaint is attached as **Exhibit A** (ECF Doc. No. 1-main).

3. On November 21, 2016, Plaintiff served a copy of the Summons and Complaint upon Defendants pursuant to Fed. R. Civ. P. 4(g) and N.Y. BCL § 307, such service was complete on December 11, 2016 (10 days after Plaintiff filed the respective affidavits of service). *See* N.Y. BCL § 307(c)(1). Copies of the Affidavits of Service upon Defendants are annexed hereto collectively as **Exhibit B** (ECF Nos. 19 and 20).

4. Defendants' time to file and serve an answer or motion under to Fed. R. Civ. P. 12 expired within 21 days from the date service was complete (i.e., by January 3, 2017).

5. Upon information and belief, defendants New Era Financial and Cyberbox are not infants, minors or incompetent persons, and are not currently in the military service of the United States.

6. Defendants did not file any answer, motion, or take any action or file any document that indicated their intent to answer the suit, or otherwise defend within the time period fixed by Fed. R. Civ. P. 12(a)(1)(A). The time for Defendants to file a response to the suit expired on January 3, 2017.

7. As a result, the clerk of this Court entered a default against Defendants on February 13, 2017. A copy of the Certificate of Default is attached as **Exhibit C** (ECF Doc. No. 25).

8. More than 100 days have passed from the date that Plaintiff served Defendants.

9. Plaintiffs' reasons and legal authority for why default judgment is appropriate are set forth in their Memorandum of Law filed concurrently herewith.

10. No prior application has been made for the relief herein sought.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Brooklyn, New York
March 7, 2017

/s/ Justin Mercer
JUSTIN MERCER